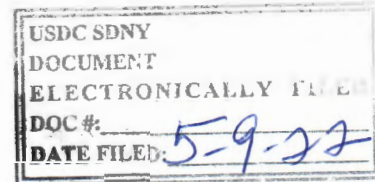


UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK



----- X  
UNITED STATES OF AMERICA

-against-

21 CR 424 (LAK)

DANZEL MACKINS,

Defendant.  
----- X

### ORDER

LEWIS A. KAPLAN, *District Judge*.

Defendant moves to suppress evidence of two identification procedures conducted through a double-blind photography array.<sup>1</sup> His principal argument is that the content of both photo arrays was unduly suggestive because the defendant's picture had a comparatively light-colored background and because his face appeared "slightly larger than [that of] the other suspects." This argument is meritless. Such minor variations, which the Court notes are barely if at all perceptible in this case, are clearly within the constitutional bounds established by the Circuit.<sup>2</sup>

Defendant's arguments concerning the "wanted flyer" are equally unavailing. The government has made clear that both witnesses identified the defendant before any such flyer issued.<sup>3</sup>

The remainder of the motion is speculative. Defendant seeks to develop the record on a theory that further production from the government might reveal some suggestive comment or behavior. However, as the government notes in its papers, the double-blind identification procedure is designed to remove the possibility of such suggestiveness by ensuring that the authority administering the lineup did not generate the array and does know which photograph depicts the

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<sup>1</sup>

Dkt. 24.

<sup>2</sup>

*See United States v. Brown*, 784 F. App'x 1, 3 (2d Cir. 2019); *United States v. Bubar*, 567 F.2d 192, 199 (2d Cir. 1977); *United States v. Fernandez*, 456 F.2d 638, 641 (2d Cir. 1972).

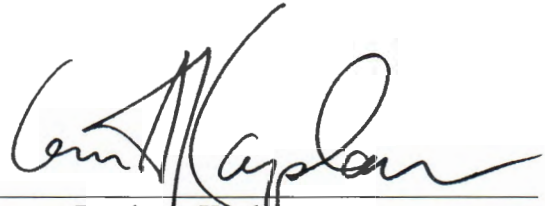
<sup>3</sup>

*See* Dkt. 25, at 5.

suspect.<sup>4</sup> The defendant has not made any pre-trial showing of impropriety as to the challenged identification procedure, and in any event, the Court is satisfied that neither the administration nor composition of the photo array was unduly suggestive. Accordingly, no hearing is warranted.<sup>5</sup> The motion to suppress (Dkt. 24) is DENIED in all respects.

SO ORDERED.

Dated: May 9, 2022

A handwritten signature in black ink, appearing to read "Lewis A. Kaplan", written over a horizontal line.

Lewis A. Kaplan  
United States District Judge

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*Id.* at 7; *United States v. Williams*, 2014 WL 144920, at \*2 (S.D.N.Y. Jan. 15, 2014).

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*United States v. Durant*, 2019 WL 2236233, at \*2-4 (S.D.N.Y. May 15, 2019); *United States v. Swain*, 2011 WL 4348142, at \*6-7 (S.D.N.Y. Aug. 16, 2011).